

1 Robert C. Cheasty, Esq. # 85115
2 Law Offices of Cheasty & Cheasty
3 1604 Solano Avenue
4 P.O. Box 8357
5 Berkeley, CA 94707
6 Telephone: (510) 525-1000
7 Email: rcheasty@cheastylaw.com

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JAMAL JACKSON; JANNIE MENDEZ,
12 Plaintiffs,

13 vs.

14 CITY AND COUNTY OF SAN
15 FRANCISCO, a municipal corporation;
16 HEATHER FONG, in her capacity as
17 Chief of Police for the CITY AND
18 COUNTY OF SAN FRANCISCO; JESSE
19 SERNA, individually, and in his capacity
20 as a police officer for the CITY AND
21 COUNTY OF SAN FRANCISCO; GARY
22 MORIYAMA, individually and in his
23 capacity as a police officer for the CITY
24 AND COUNTY OF SAN FRANCISCO;
and San Francisco police officers and
employees DOES 1 through 50, inclusive,
Defendants.

NO. 4:08-cv-01916-SBA

CASE MANAGEMENT STATEMENT.

HEARING: July 30, 2008
TIME: 2:45 p.m.
PLACE: by telephone

25 As Defendants have not yet appeared, Plaintiffs submit this as a separate Case Management
26 Statement pursuant to the Court's Case Management Conference Order, Feb. 27, 2007, and *The*
27 *Standing Order for All Judges of the Northern District of California.*
28

1. Jurisdiction and Service

This lawsuit is properly before this Court because it raises a federal question. Specifically, plaintiff alleges cause of actions under 42 U.S.C. section 1983 for alleged violations of plaintiff's constitutional rights by officers of the San Francisco Police Department. PLAINTIFF has attempted service and believes it has been accomplished as to all defendants, although they have yet to appear due to the timing of the service so if there is to be any contest as to service Plaintiff has not learned of it yet.

2. Facts

On the afternoon of February 24, 2007, Plaintiff JAMAL JACKSON, a college student, was driving with his girlfriend, Plaintiff JANNIE MENDEZ, to Pier 1 in San Francisco (at the Ferry Building along the Embarcadero) where they were to meet with some friends. On the way to meet their friends, another driver who was stuck in the late afternoon traffic took out his frustration on Jamal and others. This other driver became increasingly angry and eventually was overcome by road rage and in the process of venting his rage, and acting and driving in a hostile manner, he accosted Mr. JACKSON who defended himself.

Later, when Mr. JACKSON arrived at the pier parking lot where his friends worked, Mr. JACKSON went into the bathroom. When he emerged from the bathroom he observed a couple of police officers on the lot and learned they were looking for someone who was in some kind of dispute with another motorist. Mr. JACKSON approached the officers to explain he might be the driver they sought; to explain to them what had happened; and to lodge a complaint against the other driver. When Mr. JACKSON reached the police he was accosted by Defendant OFFICER SERNA who placed him into handcuffs and then violently struck him and threw him onto the

1 pavement and then further assaulted and battered him. This violence was wholly without
2 provocation of cause. This was in the presence of others - those who had their cars parked in the lot,
3 those who worked there, and Mr. JACKSON'S girlfriend, Plaintiff JANNIE MENDEZ.

4 Defendant OFFICER SERNA then began to pepper spray onlookers, including Plaintiff Ms.
5 MENDEZ, and to assault those in the vicinity and to continue to be physically abusive to Mr.
6 JACKSON, who was at this point was very fearful for his safety. Mr. JACKSON eventually jumped
7 up and ran from OFFICER SERNA and attempted to surrender himself to other officers. He got
8 down onto the pavement to show the officers he was not a danger or resisting them and attempted to
9 surrender himself to another couple of police officers and while he was attempting to do this
10 DEFENDANT SERNA ran up and dove onto the back of Mr. Jackson, who was prone on the
11 sidewalk. SERNA Landed with his knees into Mr. Jackson's back and then proceeded to twist Mr.
12 Jackson's wrist and twist it beyond the point it would go, and damage it. Then Mr. Jackson was put
13 into the squad car of the other officers. While he was in the back seat of the police vehicle, and
14 cuffed, DEFENDANT SERNA came up and got into the back seat and began to assault and batter
15 him again, and began verbally and physically abusing him, making repeated racially derogatory,
16 calling him nigger and using other intensely offensive words to Mr. JACKSON a young African
17 American.

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19 San Francisco Police Officers, Defendants JESSE SERNA and GARY MORIYAMA both
20 participated in the false arrest and detention of the onlookers, including Plaintiff JANNIE
21 MENDEZ, with OFFICER SERNA using chemical sprays into the eyes of onlookers including
22 Plaintiff JANNIE MENDEZ, who was held in violation of her right to freedom and to remain free
23 from molestation and unwanted assaults, batteries, arrest and detention by OFFICER SERNA.
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1 Plaintiffs JACKSON and MENDEZ observed OFFICER SERNA approached bystander
2 Shawn Myers, tell him that he was under arrest, and placed an arm bar on him. Joined by Officer
3 Moriyama, they violently manhandled Mr. Myers, threw him to the ground and arrested him,
4 without any acts of provocation by Mr. Myers. This caused great fear in both Mr. Jackson and Ms.
5 Mendez. As this event unfolded, Mr. Myers' wife repeatedly asked the officers why they were
6 arresting and manhandling her husband. In response, Officer SERNA discharged his chemical spray
7 into Sarah Myers' face, without warning or provocation and in violation of department guidelines
8 for such use and discharge. Officer MORIYAMA both assisted Officer SERNA in his unlawful use
9 of force upon Mr. Myers and stood by and failed to intervene in Officer SERNA's intolerable abuse
10 of JAMAL JACKSON and SARAH MYERS. Other Officers stood by and failed to intervene in
11 Defendant Officers SERNA's and MORIYAMA's abuse of Plaintiffs JACKSON, MENDEZ and the
12 others who were assaulted and abused by them.
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15 Mr. JACKSON was incarcerated in the San Francisco County Jail for seven days, and is
16 currently fighting false criminal charges that have been pursued by the CITY AND COUNTY OF
17 SAN FRANCISCO.
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19 Defendant Officer JESSE SERNA is a San Francisco Police Officer who has repeatedly
20 misbehaved and despite that repeated misconduct, his behavior has been allowed and permitted by
21 the Defendants CITY AND COUNTY OF SAN FRANCISCO and its Police Department and its
22 directing personnel, including its Police Chief, Defendant HEATHER FONG. This has redounded
23 to the detriment of the public and to the detriment of the rest of the police force who suffer
24 reputation-wise from the terrible misconduct and the physical abuse that Officer SERNA has
25 repeatedly committed. His misconduct and criminal acts have been widely publicized such that the
26 Department and the officials of the City of San Francisco, Defendants herein, all have been on
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1 notice of Mr. SERNA'S violations but have not taken proper steps to protect the public from Officer
 2 SERNA'S conduct. Attached to the Complaint are the Exhibits A, a group exhibit of prominent
 3 articles including an Editorial in the San Francisco Chronicle, all highlighting the misconduct of
 4 Officer SERNA, including the Editorial, that actually named SERNA, all putting the CITY AND
 5 COUNTY OF SAN FRANCISCO and the Department on Notice.
 6

7 Defendant Officers later lied by falsely claiming in their police reports that that Plaintiff
 8 JAMAL JACKSON had resisted arrest, by falsely claiming that Plaintiff JAMAL JACKSON had
 9 assaulted and battered, by falsely claiming that bystanders Mr. and Mrs. Myers had threatened the
 10 officers, that Mrs. Myers had attempted to assault Officer SERNA, that Plaintiff JANNIE
 11 MENDEZ had acted in a way to justify the spraying of her with chemical spray, falsely accusing
 12 and assaulting her.
 13

14 Plaintiff Jackson was beaten and sustained injury to his face, head, torso legs and wrists in
 15 addition to the abuse and humiliation before his girl friend, friends and the general public. Plaintiff
 16 Jannie Mendez was assaulted and battered, humiliated, sprayed with pepper spray and had to watch
 17 her boyfriend be manhandled and battered by the police.
 18

19 **3. Legal Issues**

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 21 Whether the officers falsely charged the Plaintiff Jackson to cover for their outrageous
 22 conduct in assaulting and battering the plaintiff and in the case of Serna in deliberately trying to
 injure the Plaintiff in the way SERNA battered him.

23 Whether Officer Serna should have been removed from his duties long before the incident at
 bar due to his frequent abuse of civilians in the past as he come into contact with civilians.

24 Whether the officers acted unreasonably in forcibly detaining Plaintiff Jackson and then
 battering him when he approached Officers Serna and Moriyama to talk with them.

25 Whether the Officers had probable cause to detain and/or arrest Plaintiffs.

26 Whether the officers used reasonable force against plaintiffs if they had probable cause.

27 Whether the officers are entitled to qualified immunity.

28 Whether Plaintiff(s) resisted arrest, or whether any civilian is seek refuge in the face of
 assault and battery by a police officer.

Whether Defendants' caused plaintiff's damages.

1 Plaintiffs claims include violation of 42 USC §1983 against officers SERNA and
2 MORIYAMA for excessive force and false arrest, and against Chief FONG and the CITY for
3 *Monell* violations. Plaintiffs allege that SERNA has a significant history of using excessive force
4 and fabrication, which Defendant CITY ratified through its deliberate indifference. Plaintiffs also
5 allege state causes of action including assault and battery, false imprisonment, intentional infliction
6 of emotional distress, negligent infliction of emotional distress, violation of Civil Code Sections
7 51.7 and 52.1, and negligence, negligent hiring retention, training etc.

10 4. Motions

11 Plaintiff intends to file an Administrative Motion to Consider Whether Cases Should Be
12 Related, under Civil Local Rule 3-12. This case is directly related to the case of *Myers v. City and*
13 *County of San Francisco*, USDC Northern Dist. of Cal., No. C08-01163 JSW. Both that case and
14 the one before this court arose from the same facts, with the same parties, same series of events and
15 same witnesses. The Defendant Officers SERNA and MORIYAMA battered and assaulted the both
16 sets of Plaintiffs at the same time at the same place in relation to the same fact situation. Plaintiff
17 Shawn Myers (Myers case) was arrested and battered solely because he was a witness who spoke up
18 when DEFENDANT OFFICER SERNA was battering Plaintiff JACKSON. Plaintiff Mendez was
19 pepper sprayed because she was observing the battering of Jackson and Myers. Plaintiff Sarah
20 Myers (Myers case) was pepper sprayed and arrested because she observed the battering of her
21 husband Shawn Myers and Plaintiff Jackson. This all happened due to the outrageous conduct of
22 DEFENDANT SERNA and his fellow officer MORIYAMA. All parties will be testifying at both
23 cases and many of them are parties in both cases. In the interests of justice, time, judicial economy
24 and to ward off possible dissimilar results for two cases involving the same set of facts and
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1 transactions, the cases should be related. The Myers case was filed first so Plaintiffs Jackson and
2 Medez will file for relation in that action. Additionally, Plaintiffs anticipate filing motions to relate
3 three other pending cases to the instant matter for the purposes of conducting *Monell* discovery.
4 Each of the four potentially related cases, *Hwang v. City and County of San Francisco, et al.*, case
5 no. C 07 2718 WDB (Date of incident: May 12, 2007), *Maestrini v. City and County of San*
6 *Francisco, et al.*, case no. C 07 2941 PJH (Date of incident: October 29, 2006), *Oliver v. City and*
7 *County of San Francisco, et al.*, case no. C 07 02460 JL (Date of incident: August 20, 2006), alleges
8 use of excessive force by Defendant Officer SERNA under similar circumstances, all within a 9-
9 month period. At a minimum, the *Monell* discovery is expected to be the same in each of the actions
10 pertaining to discovery of Defendant Officer SERNA's background and personnel records.
11

12 **5. Amendment of Pleadings**

13 The parties do not anticipate amending the pleadings.
14

15 **6. Evidence Preservation**

16 The parties have preserved evidence.
17

18 **7. Disclosures**

19 Plaintiffs will engage in initial disclosures pursuant to Fed. R. Civ. P. 26, and expect
20 agreement on exchanging disclosures by the date for hearing.
21

22 **8. Discovery**

23 No discovery has yet been conducted. The parties request discovery as outlined by the
24 Federal Rules of Civil Procedure.
25

26 **9. Class Actions**

1 This case is not a class action.

2
3 **10. Related Cases**

4 See Motions section above. The following cases pending before the Northern District are
5 related cases: *Myers v. City and County of San Francisco*, USDC Northern Dist. of Cal., No. C08-
6 01163 JSW (arose from the same facts, with the same parties, same series of events and same
7 witnesses). *Hwang v. City and County of San Francisco, et al.*, case no. C 07 2718 WDB (Date of
8 incident: May 12, 2007), *Maestrini v. City and County of San Francisco, et al.*, case no. C 07 2941
9 PJH (Date of incident: October 29, 2006), *Oliver v. City and County of San Francisco, et al.*, case
10 no. C 07 02460 JL (Date of incident: August 20, 2006. Plaintiffs are requesting a stipulation to
11 relate from Defendants but have not gotten any agreement on this so far.
12

13 **11. Relief**

14 Plaintiff is seeking damages, punitive damages, attorneys fees, and costs.
15

16 **12. Settlement and ADR**

17 Plaintiff will seek agreement from Defendants to a settlement conference before a magistrate
18 judge or at least to mediation.
19

20 **13. Consent to a Magistrate**

21 Plaintiffs understand that the related case of *Myers v. San Francisco* is before a Magistrate
22 Judge and therefore Plaintiffs will stipulate to appearing before a Magistrate for the handling of this
23 case.
24

25 **14. Other References**

26 Plaintiff is not aware of any other references for this matter.
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1 **15. Narrowing of Issues**

2 Plaintiffs are willing to stipulate to facts or legal issues.
3

4 **16. Expedited Schedule**

5 This case is not suitable for an expedited schedule.
6

7 **17. Scheduling**

8 The Court will need to set dates for the close of discovery, any motion for summary
9 judgment and expert disclosures.
10

11 **18. Trial**

12 Plaintiff is agreeable to the trial date of September 21, 2009, the date picked by the parties in
13 the *Myers v. San Francisco* case, assuming that this case is related to that case.
14

15 **19. Disclosure of Non Party Interested Entities**

16 The parties are unaware of nonparties with such an interest in this lawsuit except as to the
17 related case as set forth above.
18

19 Dated: July 21, 2008

20 CHEASTY & CHEASTY

21
22 By: s/Robert C. Cheasty
23 ROBERT C. CHEASTY
24 Deputy City Attorney
25 Attorneys for Plaintiffs Jackson and Mendez
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PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 and not party to the action within. My business address is 1604 Solano Ave., P. O. Box 8357, Berkeley, CA 94707.

I served the following document(s) on the interested parties in this action, as listed below, by the method(s) listed below and on the date of this declaration.

Jackson v. City & County of San Francisco, et al. USDC, No. Dist. Calif.,
Case No. NO. 4:08-cv-01916-SBA
Case Management Statement

Method of Service:

☒ Facsimile I personally sent to the person named below at the fax number set forth below a true copy of the document described above.

☐ Personal service by Messenger

☒ By email at: sean.connolly@sfgov.org.

☐ By personal delivery.

☐ By certified mail, return receipt requested, by placing a true copy of this document in a sealed envelope, postage fully prepaid, in a U.S. Post Office mailbox at Berkeley, California, addressed as set forth below.

☒ By first class mail by placing a true copy of this document in a sealed envelope, postage fully prepaid as follows:

I am "readily familiar" with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U. S. Postal Service on that same day in the ordinary course of business either by having it picked up by an employee of the U.S. Postal Service or by deposit in a U.S. Post Office mailbox at Berkeley, California, addressed as set forth below. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Sean Connolly, Attorney at Law Deputy City Attorney, City of San Francisco 1390 Market Street San Francisco, CA 94102	
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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that I executed this document in Alameda County at my above business address on July 23, 2008.

/s/ Robert C. Cheasty

Robert C. Cheasty